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BARTON E. SHOWALTER, ESQ. BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980		EXAMINER POLLACK, MELVIN H		
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DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/580,516

Applicant(s)

TRIPATHY ET AL

Examiner

Melvin H Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: see attached office action.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 14 April 2004 have been fully considered but they are not persuasive. An explanation of the issues is provided below.

2. In response to the applicant's argument that Zulch fails to show "network elements" and a "telecommunications network," the examiner notes that applicant is attempting to redefine terms well known in the art. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The terms "network element" and "telecommunications network" are well known in the art as a generic terms, i.e. as a computer node in a network that handles voice and/or data communications. The quoted segments within the specification are insufficient to redefine the terms to include the limitations that the applicant wishes.

3. In regards to network elements, the applicant wishes to make clear that the system can back up data stored in such elements as switches and routers, and preferably to elements that handle voice network connectivity. Likewise, the applicant wishes to make clear that the telecommunications network is a voice network (or a voice/data combination network). To fulfill this, the applicant must amend the claims to provide the proper and narrower terminology, such as the terminology used here. Other proper terms include circuit switching, telephony, ATM, and the like.

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4. The applicant claims, "The requirements for element management and such networks are vastly different from those relevant to telecommunications network. (P. 13, lines 3-5)" The examiner does not agree. It is well known in the art that voice and data may travel on the same network, or that a voice network may be easily connected to a data network. It is also well known in the art that switches, routers, and the like, are computers and may be treated as such. Therefore, the applicant is required to provide evidence for this assertion, preferably by showing the difficulties in backing up data located on such entities, and/or amend the claims to provide more of the backup process so as to demonstrate a difference between said backup process and the backup process of Zulch. If the backup process is the same, different element types between the processes notwithstanding, this argument must be withdrawn.

5. The applicant also challenges the Official Notice taken by the examiner. As stated in the office action, more is needed than a bald challenge (P. 8, Paragraph 26). The examiner agrees that there are some methods that "perform a one-way process" and cannot be reversed. However, the applicant must show that it would be difficult to reverse the limitations of claims 5-7, and thus such a reversal would not be well known in the art. This is exceedingly difficult in the environment of backup procedures, because by definition a backup procedure must be reversible in order to restore the stored data, lest the backup process lack utility. Alternately, the applicant must show that the process of Zulch in view of Razzaghe-Ashrafi cannot be reversed, i.e. that data can move from point A to point B but that data cannot move from point B to point A, and that the restoration process must utilize a method other than the simple reversal of the backup method. The applicant may also wish to show that the backup process of the instant

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application may not be easily reversed, and thus requires other method steps. Without the above evidence, the Official Notice stands.

6. The examiner accepts the amendment and remarks in response to the 112 rejections.

Therefore, the 112 rejections are withdrawn.

7. The examiner withdraws the objection to the specification, and accepts the new abstract.

8. As for the 102 and 103 rejections, the examiner stands. This action is final.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-4, 12, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Zulch (5,966,730).

11. For claim 1, Zulch teaches a computer/software system (see abstract) for managing (col. 5, lines 5-16) telecommunication network elements (Fig. 1), comprising:

a. One or more operator-driven processes (Fig. 3; backup scripts) which monitor and manage network elements in real time (col. 4, lines 1-20; where the backup server monitors the computers and storage media to determine if it is available, accessible, etc.), using at least one telecommunications network control channel (Fig. 1, N); and

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b. Automatically initiated background processes (col. 3, lines 55 - 67) which remotely backup information which has been locally stored in ones of said network elements (col. 4, lines 1-25).

12. For claim 2, Zulch teaches that backup processes (col. 1, lines 40-50; col. 2, lines 5-15) launch automatically on a programmed schedule (col. 2, lines 43-55; col. 5, lines 20-30). The examiner notes that a programmed schedule, as currently drawn in the claims of the instant application, may be a variety of automated processes based on automated triggers that may be chronological (once a day/first day of month) or procedural (whenever a change to a network element is made).

13. For claim 3, Zulch teaches that backup processes also can remotely restore information which had been locally stored on ones of said network elements (col. 1, lines 20-30; col. 2, lines 5-10 and 40). Further, it is inherent that if data is stored on a disk, it can be read from the disk. Likewise, it is inherent, and thus anticipated, that if a file is backed up, it may be recovered through some mechanism.

14. For claim 4, Zulch teaches a method (see abstract) for managing (col. 5, lines 5-16) a plurality of network elements of a telecommunications network (Fig. 1), comprising:

- a. Coupling a telecommunications network element manager (Fig. 1, R) with a plurality of network elements (Fig. 1, C & P) using at least one telecommunications network (Fig. 1, N) control channel (col. 6, lines 13-45);
- b. Each network element being operable to store respective local data regarding the configuration or operation of the network element (Fig. 2; col. 6, lines 50-55);

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- c. Receiving, from each of the plurality of network elements, the respective local data (Fig. 5A; 99); and
- d. Storing the respective local data at a database (Fig. 2, M, in light of Fig. 4, which shows that the data is saved along with other information, thus forming a database) of the network element manager (col. 2, lines 10-15; col. 10, lines 18-25).

15. Claim 12 is drawn to a network element manager system that implements the method drawn in claim 4. It is well known in the art that a system implementation is functionally equivalent to the underlying method. Therefore, since claim 4 is rejected, claim 12 is also rejected for the reasons above. A teaching that shows the functional equivalence will be included upon request.

16. Claim 20 is drawn to a network element manager system that implements the method drawn in claim 4. It is well known in the art that a system implementation is functionally equivalent to the underlying method. Therefore, since claim 4 is rejected, claim 20 is also rejected for the reasons above. A teaching that shows the functional equivalence will be included upon request.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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18. Claims 5-7, 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zulch as applied to claims 1-4, 12, 20 above, and further in view of Fletcher et al. (6,038,379) and Brandt et al. (6,101,533) and Klimenko (5,974,547).

19. For claim 5, Zulch teaches that at least one of the plurality of network elements comprises a network element (col. 6, lines 15-20) having an active memory coupled to a random access memory (col. 6, lines 40-45), further comprising the selection to backup certain files (col. 8, line 30) or memory section of a particular computer (col. 8, lines 10-15). Zulch does not expressly disclose the detailed innards of any particular path, and thus does not expressly disclose that files travel from the active memory (disk) to RAM to RAM of the network element manager.

20. Fletcher teaches a method (see abstract) of remote backup (col. 1, lines 10-30) in which both workstations and file servers may be backed up (col. 1, lines 35-45) despite the use of different computer types (col. 1, lines 45-50; col. 2, lines 10-20), thus indicating that multiple protocols are used (col. 3, lines 45-65). Fletcher also shows the movement of the data between differing memory modules (Fig. 3-5) in which agents are used to copy and move files. At the time the invention was made, one of ordinary skill in the art would have used Fletcher's agent and memory management system to learn how to implement Zulch's computers, and to allow Zulch to handle a wide variety of computer types.

21. Neither Zulch nor Fletcher expressly disclose specifically OSI networks, FTAM protocols, or configuration files. Instead, the types of files, protocols, and networks are generic, and both show that the systems can handle different system types. The type of file, network or protocol is considered a design choice by the examiner, as the invention as currently drawn could

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change any of these types without change of functionality, and as the invention does not truly rely on any specific protocol, network, or file type. Brandt teaches the usage of FTAM and FTP protocols over OSI (TCP/IP) networks (col. 12, lines 30-45). Klimenko teaches the storage of configuration files (Fig. 2A, 245). At the time the invention was made, one of ordinary skill in the art would have used Brandt and Klimenko's specific details in the Zulch/Fletcher hybrid storage system in order to ensure the storage of important files and to allow the system to be used in certain important existing networks such as remote boot system networks.

22. Claim 6 has limitations similar to the method of claim 5, with the use of different network protocols, which the examiner has shown. Claim 6 further shows that a gateway network element may be used as well, which Fletcher also teaches (col. 1, lines 40-45; col. 9, lines 45-55). At the time the invention was made, one of ordinary skill in the art would have used Fletcher so as to ensure that Zulch servers would also have its critical data protected. Therefore, claim 6 is rejected for the reasons above.

23. Claim 7 is a combination of the methods drawn in claims 5 and 6. Therefore, since claims 5 and 6 are rejected, claim 7 is also rejected for the reasons above.

24. Claims 13-15 are drawn to a network element manager system that implements the method drawn in claims 5-7, respectively. It is well known in the art that a system implementation is functionally equivalent to the underlying method. Therefore, since claims 5-7 are rejected, claims 13-15 are also rejected for the reasons above. A teaching that shows the functional equivalence will be included upon request.

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25. Claims 8-11, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zulch as applied to claims 1-4, 12, 20 above, and further in view of Razzaghe-Ashrafi (6,330,715).

26. For claim 8, Zulch does not expressly disclose that the method further comprises detecting, at the network element manager, a corrupted network element database associated with one of the plurality of network elements; and restoring the corrupted network element database with the configuration data regarding the corrupted network element database, stored at the network element manager. However, it is obvious to one of ordinary skill in the art that restoration of corrupted files is the entire purpose of a file backup system, and thus at issue is the automated discovery and restoration of corrupted files. Razzaghe-Ashrafi teaches a method (see abstract) of automatically detecting and repairing corrupted files (col. 2, line 60 – col. 3, line 30). This teaching also shows that updating systems can have many or all of the limitations drawn in the above claims, particularly in remote booting environments where some of the operating system or applications may be customizable. At the time the invention was made, one of ordinary skill in the art would have automated the restoration process of Zulch in order to more quickly diagnose and solve problems (col. 2, lines 55-60).

27. Regarding claims 9-11, examiner takes Official Notice (see MPEP § 2144.03) that the reversal of a process in a computer networking environment was well known in the art at the time the invention was made, with few exceptions being made based on certain configurations such as one-way channels. In this specific item, claims 9-11 are drawn to a method that is the precise reverse of claims 5-7, respectively. It is obvious to one of ordinary skill in the art that the system and method drawn in claims 5-7 are reversible; i.e. that if data moves from point A to point B, then it can move from point B to point A. Further, it is obvious that if a file is written or

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backed up, it can be read or restored. Since claims 5-7 are rejected, claims 9-11 are also rejected for the reasons above.

28. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)."

Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

29. Claim 16 is drawn to a network element manager system that implements the method drawn in claim 8. It is well known in the art that a system implementation is functionally equivalent to the underlying method. Therefore, since claim 8 is rejected, claim 16 is also rejected for the reasons above. A teaching that shows the functional equivalence will be included upon request.

30. Claims 17-19 are drawn to a network element manager system that implements the method drawn in claims 9-11, respectively. It is well known in the art that a system implementation is functionally equivalent to the underlying method. Therefore, since claims 9-11 are rejected, claims 17-19 are also rejected for the reasons above. A teaching that shows the functional equivalence will be included upon request.

Conclusion

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31. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H Pollack whose telephone number is (703) 305-4641. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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MHP

15 June 2004


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER